(1)

Supreme Court, U.S.
FILED

62

091446 MAR 29 2010

No.

OFFICE OF THE CLERK

In The

Supreme Court of The United States

Kenneth J Taggart, Pro Se

Petitioner

v.

Chase Bank USA N.A.,
Chase Home Finance, LLC &
JP Morgan Chase Bank

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Kenneth J Taggart, Pro Se
45 Heron Rd
Holland, Pa 18966
215-774-1585
appraisalls@verizon.net

Questions Presented for Review

1) Which circuit court is correct. Equitable tolling of the statute of limitations was not applied by the Third Circuit Court of Appeals as it has by the Sixth Circuit, Ninth Circuit, and Eleventh Circuit on predatory and sub-prime lending. (In Truth-In-Lending Statute cases)

2) When the *discovery rule* is to be applied in a predatory and sub-prime lending case when the borrower was not afforded the necessary time to complete "due diligence" by the lender due to fraud and lack of disclosure.

3) *Whether the Third Circuit Court has made a decision that is in direct conflict with the intent of congress when it enacted "Truth-In-Lending Laws"*; The Third Circuit Court of Appeals has interpreted that, " The Margin" on an adjustable rate loan does not have to be disclosed prior to closing, This does not represent the *intent* of congress when it enacted the Federal Truth - In - Lending Statutes. Examination of : *McCutcheon v. America' s Servicing Co. 560 F. 3rd 143, 150 n.6.*

4) Clarification of "A Loan for Consumer Purposes" Examination of the "Handbook " on Truth- In-Lending published by "The Office of The Comptroller of Currency". This may toll the statute of limitations. (2006 & 2008 Ed)

5) Whether State Laws should be cited by a Federal Court for a Pro Se Plaintiff when Plaintiff was not aware that State Laws were applicable in the case. (When in Federal Court) Examination of : *Hill v. GFC Loan Co.* 2000 *U.S. Dist. Lexus 4345* (N.D. ILL. Feb 15,2000).

Brief Introductory Statement

This is a case that would be of particular interest to The Supreme Court; It involves sub-prime and predatory lending issues that have affected the borrower, as well as millions of Americans similarly situated. The decision of The Third Circuit conflicts with other Circuit Courts as to the applicability of the *Discovery Rule* and *equitable tolling* of *The Federal Truth - In - Lending statutes* in regards to *sub-prime and predatory mortgages.*

This case brings to light the issues of predatory and sub-prime lending; This case *exemplifies* how banks were skirting the law by concealing terms so that they would not be discovered until after the statute of limitations had expired. This case shows that if all terms were disclosed properly,no person would have knowingly chosen this loan.

In most predatory and sub-prime mortgage cases, there is fraud, omission, lack of full disclosure, and concealment of *terms*, that are *not discovered until after the statute of limitations have expired.*; This is particularly true in hybrid and adjustable type mortgages.

In this case, as well as many other predatory and sub-prime mortgage cases, the borrower has been disenfranchised by the lender and has little or no money left to mount a viable defense against a predatory lender; The court(s) *failed to interpret Pro Se case law* to provide relief on any possible theory as required. *Hill v. GFC Loan Co.* 2000 U.S. Dist Lexis 4345 (N.D. ILL Feb 15,2000). *This is disenfranchising borrowers who have already been victims of sub-prime and predatory lending.*

Parties To The Proceedings

The following individuals and entities are parties in the court below.

Kenneth J Taggart, Pro Se

Petitioner

Chase Bank USA N.A. and Chase Home Finance, LLC
Also improperly pled as JP Morgan Chase Bank N.A. d/b/a Chase Home finance, LLC,

Respondents

TABLE OF CONTENTS

Page

BRIEF INTRODUCTORY STATEMENT..... i

QUESTIONS PRESENTED..... ii

PARTIES TO THE PROCEEDINGS..... iii

TABLE OF CONTENTS..... iv

TABLE OF AUTHORITIES.....vi

BRIEF FOR PETITIONER.....1

OPINIONS.....1

JURISDICTION.....2

SUMMARY OF THE CASE.....3

SUMMARY OF ARGUMENT 7

A. Reasons Why Equitable Tolling Apply.....7

1. All federal statutes have equitable tolling.....7
unless otherwise stated
2. As a matter of law, discovery equitably.....7
tolls the statute of limitations
3. Fraud and willful intentions to mislead.....7
toll the statute of limitations

TABLE OF CONTENTS - con't

4. As a matter of law, equitable tolling of the..... 8
Statute of limitations apply and may be asserted when in collection or foreclosure.
5. Equitable tolling applies when "Right of.....8
Rescission" was not provided.
6. Equitable tolling when loan terms are 8
misleading and confusing.

B. Equitable Tolling Doctrine Does Apply..... 9
C. Third Circuit on Adjustable Rate Mortgages.....10
Reversal of Third Circuit's Decision On Adjustable Rate Mortgages Could Toll Statute of Limitations.
D. Petitioners Right to Amend Complaint.....11
E. The Court Erred - Pro Se Rights..... ..12

ARGUMENT.....12

1. Equitable Tolling of Statute of Limitations.....12
In Truth - in - Lending & Conflicts in The Courts
2. . Equitable Tolling of Statute of Limitations.....16
In Truth - in - Lending & The Discovery Rule
3. Decision by the Third Circuit in Direct Conflict.....17
With the intent of Truth - in - Lending.
Examination of : *McCutcheon v. America's Servicing Co. 560 F. 3rd 143, 150 n.6.*
4. Clarification of a loan "For consumer Purposes" 18
5. Were any of Petitioners Pro Se Rights Violated.....19

CONCLUSION.....22

TABLE OF AUTHORITIES

Able v Mid Penn Consumer Discount. 14
77 B.R. 460, *affirmed* S45 F 2nd 1009

Andrews v. Chevy Chase Bank 17
(E.D. WIS. Jan 16,2007),

Baily v. Glover, 88 U. S. (21 wall).....17
342, 347 (1874),

Belmont v. Associates Bank, ...15
119 F. Supp, 2nd 149,159 (E.D. N.Y.. 2000).

B Platsky v.CIA 953 F.2ND 252628 (2ND CIR 1991). 20

Brown v. Mortgage Star. 194 F. 20
Supp 2 nd 273 (S.D. W Va 2002

Cashmere Valley Bank v. Bender ,146 P 3rd 928, ...18
Supreme Court of Washington, November 16

Clement; 145 F. Supp 2nd at 210.....*15*
quoting Griggs, 503 F. Supp at 249

Clement v. American Honda Finance Corp.....13
145 F. Supp. 2nd 206,210 (D Conn. 2001).

Edmonston v. Allen-Russell Ford, Inc, ...13
577 F. 2nd 291, 296 (5th Circuit.1978

Ellis v. General Moters Acceptance Corp. *12,13*
(U. S. 11th Cir 1999) 160 F. 3rd 703

In re Filder, 210 B.R. 411 (D. Mass. 1997). 14

Herrara v. North & Kimball Group, Inc.....19
2002 WL 253019 (N.D. ILL. Feb 20,2002).

Hill v. GFC Loan Co. 2000U.S. *12,19,22*
Dist Lexis 4345 (N.D. ILL Feb 15,2000).

Holmberg v Armbrecht U.S. Supreme Court *13, 16*
327 U.S. 392 (1946)

Huff v. Steward - Gwinn Furniture.....*14*
Company 713, F 2nd 67,69 (4thCircuit 1983)

Jones v. Trans Ohio Savings Ass'n, ...12
747 F.2nd 1037 (6th Cir. 1984),

King v California, 84 F. 2nd 910 (9thCir 1986). 12

Kramer v. Dunn, 749 A. 2nd 984,989 (Pas Supp2000)...17

McCutcheon v. America's Servicing ii,10,17
Co 560 F. 3rd 143, 150 n 6.

McIntosh v. Irwin Union Bank & trust Co..... *17*
215 F.R.D. 26,30 (D Mass 2003)

Noel v. Fleet Finance Inc. 971. F. Supp..... ...15
1102 (E.D. Mich 1997).

Oldroyd v. Associates Consumer Discount *13*
Company PA, 863 F Supp. 237, 240 (E.D. Pa 1994)

Osterneck v. ET Berwick Ind, ... 17
825 F 2nd 1521, 1535 (11th Circuit. 1987). .

Aff'd, Osterneck v. Ernst & Whitney, ...17
489 U. S. 169 (1989)

Payne v. Equicredit, No. 00-6442, ...14
slip op. at 10-11 (E.D. Pa April 12, 2002)

Ramadan v. Chase Manhatten Corporation 12
(D.C. Civ. No 96-03791 (3rd cir) June 8,1998.

Rosemary A. Gilroy v Americus .....12 ,22
Mortgage Company et al. Fn1

Rotella v.Wood, 528 U.S. 549,120 S. Ct 17
1075,145 L. Ed 2nd 1047 (2000),

Smith v. Cash Store Mgmt, 195 F3rd 3 25,.....13
328 (7th Circuit 1999).

Smith v. Chapman, 164 F. 2nd 968.....13
, 977 (5th Circuit 1980).

Smith v. Fidelity Consumer Discount Comp-.....13
any, 898 F. 2nd 896,898 (3rdCircuit 1990)

Washington v. Ameriquest Mortgage 14
Company 2006 W. L. 1980201 (N.D. 111).

Wise v. Mortgage Lenders Network USA Inc.....13
420 F Supp. 2nd 389,394-5 (E.D. PA 2006).

Wood v. Beneficial Finance Co. of Eugene, 395 F. Supp. 9,12 (DC Or 1975). 13

FEDERAL STATUTES

The Truth-In-Lending Act (TILA). 15 USC 1601-1667f (Amended as of January 1, 2001) 3,6,7,8,10,13,14,17,19,21,22

15 U.S.C. *1601* 18

15 U.S.C. 1632 (a). 13

15 *U.S.C. 1632(a),* 226.5(a)(1) 13

15 U.S.C. 1638(a)(3) and (a)(4). 14

15 U.S.C. 1632 (a). 18

15 U.S.C. *1635(I).* 18

15 U.S.C. 1635(a) 18

15 U.S.C. 1601(a) 17

The Real Estate Settlement 3,7,8,13,14,15,19,21,22
& Procedures Act (RESPA)

12 U.S.C.

Reg Z 226.19(b)(2)(iv). 14

Reg "Z" 226.19 (b) (2) 14

Reg"Z" 226.20(c)(1)-(4).....14

PENNSYLVANIA STATE LAW

The Pennsylvania Unfair Trade Practices Act and ... 19,22
Consumer Protection Law

UTPCPL 73 P.S. § 201-1, et seq.

ARM -ADJUSTABLE RATE
MORTGAGE INFORMATION

The Margin.....4

3-1.ARM.mortgage.....4

ARM.....4,6

Libor.Index.....5

Adjustable Rate Mortgage (ARM)

From Wikipedia March 28,2010

An **adjustable rate mortgage** (ARM) is a mortgage loan where the interest rate on the note is periodically adjusted based on a variety of indices.[1] Among the most common indices are the rates on 1-year constant-maturity Treasury (CMT) securities, the Cost of Funds Index (COFI), and the London Interbank Offered Rate (LIBOR). A few lenders use their own cost of funds as an index, rather than using other indices. This is done to ensure a steady margin for the lender, whose own cost of funding will usually be related to the index. Consequently, payments made by the borrower may change over time with the changing interest rate (alternatively, the term of the loan may change). This is not to be confused with the graduated payment mortgage, which offers changing payment amounts but a fixed interest rate. Other forms of mortgage loan include the interest only mortgage, the fixed rate mortgage, The negative amortization mortgage, and the balloon payment mortgage. Adjustable rates transfer part of the interest rate risk from the lender to the borrower. They can be used where unpredictable interest rates make fixed rate loans difficult to obtain. The borrower benefits if the interest rate falls and loses out if interest rates rise. Adjustable rate mortgages are characterized by their index and limitations on charges (caps). In many countries, adjustable rate mortgages are the norm, and in such places, may simply be referred to as mortgages.

BASIC FEATURES OF ARMS

From Wikipedia March 28,2010

The most important basic features of ARMs are:

Initial interest rate. This is the beginning interest rate on an ARM.

The adjustment period. This is the length of time that the interest rate or loan period on an ARM is scheduled to remain unchanged. The rate is reset at the end of this period, and the monthly loan payment is recalculated.

The index rate. Most lenders tie ARM interest rates changes to changes in an index rate. Lenders base ARM rates on a variety of indices, the most common being rates on one-, three-, or five-year Treasury securities. Another common index is the national or regional average cost of funds to savings and loan associations.

The margin. This is the percentage points that lenders add to the index rate to determine the ARM's interest rate.

Interest rate caps. These are the limits on how much the interest rate or the monthly payment can be changed at the end of each adjustment period or over the life of the loan.

Initial discounts. These are interest rate concessions, often used as promotional aids, offered the first year or more of a loan. They reduce the interest rate below the prevailing rate (the index plus the margin).

Negative amortization. This means the mortgage balance is increasing. This occurs whenever the monthly mortgage payments are not large enough to pay all the interest due on the mortgage. This may be caused by the pay-

ment cap contained in the ARM when are high enough that the principal plus interest payment is greater than the payment cap.

Conversion. The agreement with the lender may have a clause that allows the buyer to convert the ARM to a fixed-rate mortgage at designated times.

Prepayment. Some agreements may require the buyer to pay special fees or penalties if the ARM is paid off early. Prepayment terms are sometimes negotiable. It should be obvious that the choice of a home mortgage loan is complicated and time consuming. As a help to the buyer, the Federal Reserve Board and the Federal Home Loan Bank Board have prepared a mortgage checklist.

FEDERAL AGENCY PUBLICATIONS

The Comptroller of Currency 7,8,18
"Truth-in-Lending Handbook "
2006 & 2008 Edition

FEDERAL RULES OF CIVIL PROCEDURE

FRCP Rule 59.....*11 ,21*

FRCP Rule 60.....*11,21*

BRIEF FOR PETITIONER

Petitioner Kenneth J Taggart respectfully requests that the court reverse the judgment of The United States Court of Appeals for the Third Circuit.

OPINIONS

The order of The United States Court of Appeals for the Third Circuit is dated December 29,2009. The order denying petition rehearing and rehearing en banc.

The judgment of The United States Court of Appeals for the Third Circuit is dated November 27,2009.
(Appendix 1-2)

The Third Circuit courts opinion dated November 19,2009. (filed November 27,2009)
(Appendix 3-10)

The order from The United States District Court of Eastern Pennsylvania dated June 15,2009.
(Appendix 11)

The opinion/memorandum from The United States District Court of Eastern Pennsylvania dated June 15,2009
(Appendix 12-14)

The order denying Rehearing by the Third Circuit Court of Appeals dated December 29,2009
(Appendix 15-16)

JURISDICTION

The judgment of the court of appeals was entered on November 19, 2009. The order denying rehearing and rehearing en banc was entered on December 29, 2009. The timely appeal is within 90 days from the order denying. The 90th day to appeal is on March 29, 2010. The Petition was sent via U.S. Postal Service on March 29, 2010.

SUMMARY OF CASE

On March 5,2005, Petitioner commenced an action in Philadelphia Municipal Court asserting *predatory lending violations of* The Truth-In-Lending Act (TILA) and The Real Estate Settlement & Procedures Act (RESPA) regarding his *sub-prime mortgage origination process* and *mortgage closing* that occurred on July 20, 2005. Respondents later moved the case to The District Court for the Eastern State of Pennsylvania.

On April 16,2009 Respondents filed a " Motion to Dismiss" because the TILA & REPSA claims are time-barred. Respondents also asserted Petitioner 's rescission claims were not actionable under TILA.

On May 5,2009, the District Court converted the "Motion to Dismiss to a "Motion for Summary Judgment" *without waiting for a timely response from Petitioner,* but then permitted Petitioner thirty days to "*if possible, demonstrate* why the action was not filed too late (for example, if equitable Tolling applies)" (*Note, if possible).*

The Petitioner *responded to the Motion on* May 7, 2009 and also requested that the court allow the Petitioner to amend the complaint to comply with the more stringent standards for pleading in Federal Court as well as recently discovered violations of State law violations and other federal laws. A request for a status conference to be held was also made on the same date; *The court never responded to either request.* The court dismissed the case "with prejudice", however the courts memorandum from June 15, 2009. indicated that it did not apear to have understood the gist of the case.

The Petitioner has stated and does not dispute that he applied for a 3-1 ARM mortgage (A fixed rate for the first 3 years and an adjustable rate thereafter).*What the court failed to see was the concealment of the terms of the adjustable rate portion or the mortgage.* The Petitioner was fully aware, and does not dispute that the payment could change or adjust after the 3 year fixed period ended.

What the Petitioner is disputing is the lack of disclosure and concealment of "The Margin", as well as other Terms of the loan; Therefore key factors in determining the rate for the balance of the 27 years of the 30 year mortgage. No minimum interest rate or margin was disclosed as well.

" The Margin" is what is added to the Index to calculate the adjustable rate. "The Margin" was not disclosed and concealed three times: *a)* intentionally omitted from initial disclosures 3-days after mortgage application, b*)* 3 days prior to closing they were not provided, *c)* and closing documents were not provided 24 hours prior to closing. *Respondents have shown by omission and concealment a willful attempt to mislead Petitioner.* There was no representative from Respondent at closing to explain the mortgage doc uments and the "Adjustable Rate Terms"; The mortgage documents were confusing and misleading to Petitioner.

This was the first time (at closing) that documents and disclosures were provided about the margin and other adjustable rate term such as a minimum interest rate. The Petitioner was provided paperwork at the last minute and rushed through closing. Chase (Respondent)also stated

that the rate lock would expire and the rate would be higher if the Petitioner did not settle that day. There was also no "Right of Rescission" given to Petitioner .

The Petitioner discovered that the terms disclosed by the broker of the loan were not correct when the fixed rate period ended after 3 years; This is when payment skyrocketed although the "Libor Index" declined (The payment should have gone down). *Petitioner then investigated the reason for the high payment. That is when it was discovered that it was not what was disclosed by the lender to the Petitioner or led to believe until that point.*

Petitioner should have had 50 days to complete "Due Diligence", but instead had less than one hour due to lack of disclosure. One hour is hardly enough time to complete "Due Diligence" when 50 days should have been afforded by law. This is clearly fraud and deception! The short one hour of "Due Diligence" time provided at settlement was not enough time to catch the change in terms that were never disclosed.

Furthermore, Petitioner entered into an adjustable rate mortgage to take advantage of the anticipated decline in interest rates. Fixed rates at the time were about 6 %- 6.5%, about the same or slightly less than the adjustable rate.

This makes it obvious that there was no benefit to the Petitioner for choosing an adjustable rate option that was provided at settlement; The payment would only go up to at least 7.125% after 3 years and as much as 13.5% and never go below 7.125% . No rational person would have knowingly chosen this loan. There is typically no need

to view documents after closing, therefore undisclosed terms go unnoticed. If a borrower signs closing documents and does not catch any undisclosed terms in a one hour closing they loose all right to TILA; On an adjustable rate mortgage, because borrower will not realize undisclosed terms until after statute of limitations ends in one year (if not tolled). *No rational borrower would knowingly sign for this loan if the terms were fully disclosed*

See chart for comparison

Terms Comparison of Loans:

Fixed Rate	**Adjustable Rate**
6% - 6 ½% for 30 years	**6 ½ % for 1st 3 years**
Fixed for entire 30 years	**Minimum 7.125% rate for remaining 27 Years**
	May go as high as 13.5%

The payment went up several hundred dollars and Petitioner was not able to afford the absorbitant payments; The loan subsequently went into default due to the undisclosed terms. The Petitioner made all payments on the loan until about five to six months after the payment increased and Petitioner could not afford the higher payment. Legal action commenced at that point.

The loan is currently in collection/ foreclosure status with Respondents

SUMMARY OF ARGUMENT

A Reasons Why Equitable Tolling Apply

The order from the district court states that "even assuming (contrary to some potent arguments made by the defendants) Petitioner might have had some valid claim against someone, this lawsuit was filed too late, and must be dismissed". *The issue at question is if there is equitable tolling under The law.*

There are several reasons why equitable tolling applies.

First, all federal statutes have equitable tolling unless otherwise stated. Case law supports tolling: Equitable Tolling on all federal statutes unless otherwise stated and extensive case law supports tolling under TILA & RESPA.

Second, as a matter of law, the discovery rule equitably tolls the statute of limitations. Case law supports the discovery rule as well. Extensive case law that supports the discovery rule as well as the applicability to TILA & RESPA

Third, as a matter of law, willful intentions to mislead and fraud provide for equitable tolling of statute of limitations. 1) The Comptroller of Currency Truth - in - Lending Handbook 2006 & 2008 Edition provides that there is no statute of limitations for willful intentions to mislead and fraud. *2)* Extensive case law supports this as well. There has been many examples provided of willful intentions to mislead and fraud.

Fourth, as a matter of law, equitable tolling of the statute of limitations apply and may be asserted when in collection and foreclosure. 1) The Comptroller of Currency Truth - in - Lending Handbook 2006 & 2008 Edition provides that statute of limitations may be tolled in collection/foreclosure cases. *2)* Extensive case law supports this as well. The loan is currently and has been in collection /foreclosure.

Fifth, no "Right of Rescission" was ever given to Respondents. This provides for equitable tolling of the statute. Respondents failed to provide Petitioner "Right of Rescission"; No rescission was ever granted, therefore the clock does not start ticking until rescission is provided to Petitioner. Respondents acknowledges that no rescission has been extended to Petitioner at closing or at any time to date. The Petitioners loan meets the definition and statutes under TILA for a loan for consumer purposes. Statute begins when rescission is given. Extensive case law supports this. Respondent claimed the lon was not for consumer purpose.

Sixth, The loan terms were confusing and misleading. This Tolls the statute of limitations. The Respondents are required to provide loan disclosures and loan documents in clear and concise terms that are easily understandable and not misleading. It is clear that the Respondents did not provide clear and concise terms and provided misleading disclosures and documents. The Respondents also omitted some key TILA & RESPA disclosures and failed to follow procedures during the course of the origination of the loan. Extensive case law as well as TILA and RESPA statutes cited in the brief were violated.

B The Equitable Tolling Doctrine Does Apply.

Equitable tolling applies as all federal statutes; There is also willful intentions to mislead , and the application of the discovery rule. The Petitioner bears the burden of adequately alleging the elements of tolling. The Respondent has cited several willful intentions to mislead and reasons the *discovery rule* is applicable.

The Respondents have produced no signed copies or proof that all terms of the loan, including the margin were provided; Respondent is required to show proof of compliance when violations are asserted. They were not provided *1)* 3 days after mortgage application, *2)* they were not provided 3 days prior to closing, or *3)* they were not provided 24 hours prior to closing . *The burden of proof is on the Respondent to show compliance;* They have not shown any proof of compliance.

Since they have not shown compliance, this shows that there was willful intentions to mislead. Furthermore, the Respondents acknowledges that no " No Right of Rescission" was provided to the Petitioner .

Petitioner exercised due diligence in defending his legal rights by filing a claim in approximately 4 months from the time of discovery. *The Petitioner does in fact assert now and in briefs that he was actively misled as to the loan terms and as to his rights by the Respondents. When discovered, Petitioner contacted " Chase' (Respondent)"; They said " There was nothing you can do". Briefs also assert that there were omissions and intentions to mislead.*

C Third Circuit on Adjustable Rate Mortgages

The Third Circuit Court of Appeals has made a ruling on adjustable rate mortgages that is in direct conflict with the intent of congress when it enacted the Federal Truth - In- Lending laws. *McCutcheon v. America's Servicing Company*. 560 F.3rd, 150 n.6 (3rd Cir 2009).

The opinion stated that " The only required material disclosures with respect to the variable-rate nature of a mortgage are the notification that the interest rate and monthly payment may increase and the amount of the single maximum monthly payment".

The purpose of "The Truth-In-Lending Act" (TILA) 15 U.S.C. 1601(a) clearly states " *The informed use of credit results from awareness of the cost thereof by consumers*. It is the purpose of this sub-chapter to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices".

This decision by the Third Circuit Court is in direct conflict with the intent of The Truth - In - Lending laws. The consumer is not fully informed of the complex terms of an adjustable rate mortgage when only " the notification of monthly payment may increase and the amount of the single maximum monthly payment.

This does not require the lender to notify the borrower of a minimum payment , margin or many other features of an adjustable rate mortgage after the fixed rate period ends. There are so many variations of adjustable rate loans that this decision by the court leaves many variables undisclosed prior to closing. This does not represent full disclosure of loan terms.

This would make it impossible for a consumer to readily compare adjustable rate loans and be fully informed as was the intent of congress when enacting "Truth - In - Lending"

D The Petitioner's Right to Amend the Complaint

It is a manifest injustice to the Petitioner for the Petitioner not to have the Right to amend the complaint when it was requested of the court. The court did not grant the Petitioner a right to a fair trial.

The District court failed to provide Petitioner right to amend the complaint or even acknowledge the request to amend complaint under *FRCP Rule 60 or Rule 59.* Case law also supports the that the district court did not give Petitioner guidance of citing other possible laws as required in Pro Se cases.

E **The court erred as noted in appeal.**

. *The court did not examine the complaint for relief on any possible theory as required Hill v. GFC Loan Co.* 2000U.S. *Dist Lexis* 4345 (N.D. ILL Feb 15,2000).

District court failed to construe the complaint liberally in favor of the party in reviewing a Pro Se complaint. *Rosemary A. Gilroy v Ameriquest Mortgage Company et al. Fn1*

ARGUMENT

The first question for review: Equitable tolling does apply to fraud and intentions to mislead consumer.

Conflicts in Circuit Courts

The 3rd Circuits decision indicating that Truth - In - Lending laws are not subject to *Equitable Tolling* conflicts with *other circuit courts;* The 11th Circuit Court, *Ellis v. General Moters Acceptance Corp.* (U. S. 11th Cir 1999) 160 F. 3rd 703 , The 6th Circuit Court, *Jones v. Trans Ohio Savings Ass'n,* 747 F.2nd 1037 (6th Cir. 1984), and The 9th Circuit Court, *King v California*, 84 F. 2nd 910 (9thCir 1986). Three other courts have ruled that the Truth - In- Lending *(TLA)* Statutes *are ordinary,*and *subject to equitable tolling.* The 3rd Circuit relied on *Ramadan v. Chase Manhatten Corporation* (D.C. Civ. No 96-03791 (3rd cir) June 8,1998. in whole or in part to make a decision that *conflicts with 3 other circuit court decisions and The U.S. Supreme Court.*

Equitable tolling must be read into every federal statute unless congress specifies otherwise, U. S. Supreme Court , *Holmberg v. Armbrecht*, 327 U. S. 392 (1946). Case law supports equitable tolling for an active attempt to conceal material terms, and willful intentions to mislead, *Wise v. Mortgage Lenders Network USA Inc.* 420 F Supp. 2nd 389,394-5 (E.D. PA 2006). *Also see, Ellis v. General Moters Acceptance Corp.* 160 F. 3rd 703 (US 11th Circuit 1999)

The Petitioner was willfully misled and Respondents committed fraud by failing to provide and concealing material facts of the loan in question. *Oldroyd v. Associates Consumer Discount Company PA,* 863 F Supp. 237, 240 (E.D. Pa 1994 . Full compliance is imperative under *TILA & RESPA , Clement v. American Honda Finance Corp.*145 F. Supp. 2nd 206,210 (D Conn. 2001). The disclosures must be made clearly and conspicuously , *15 U.S.C. 1632 (a). TILA & RESPA* call for disclosures to be made in a manor that is reasonable to understand by ordinary persons. *Edmonston v. Allen-Russell Ford, Inc*, 577 F. 2nd 291, 296 (5th Circuit.1978), *Smith v. Cash Store Mgmt*, 195 F3rd 3 25, 328 (7th Circuit 1999). Required disclosures must be clear and conspicuous, *U.S.C. 1632(a),* 226.5(a)(1)

Respondents concealed terms to make loan appear less than actual cost, *Wood v. Beneficial Finance Co. of Eugene,* 395 F. Supp. 9,12 (DC Or 1975). Only 1 simple violation of *TILA & RESPA* need be proven to hold defendant liable, *Smith v. Fidelity Consumer Discount Company*, 898 F. 2nd 896,898 (3rdCircuit 1990) *TILA & RESPA* must be followed strictly. Smith v. Chapman, 164 F. 2nd 968

, 977 (5th Circuit 1980). *& Able v Mid Penn Consumer Discount*. 77 B.R. 460, *affirmed* 845 F 2nd 1009. Even minor violations of *TILA & RESPA* a re wrong. *Huff v. Steward - Gwinn Furniture Company* 713, F 2nd 67,69 (4th Circuit 1983), *also, Washington v. Ameriquest Mortgage Company 2006* W. L. 1980201 (N.D. 111). Respondents failed to disclose properly and accurately the requirements of variable rate loans, this entitles statutory and actual damages and also rescission right. *In re Filder, 210 B.R. 411* (D. Mass. 1997). *Specific disclosures are required for variable rate loans. Reg Z 226.19(b)(2)(iv). Subsequent disclosures are required for variable rate loans. Reg "Z" 226 19 (b) (2). Notice of the adjusted payment amount, interest rate, index rate, and loan balance is required to Disclose to the borrower in a timely manor. Reg"Z" 226 20(c)(1)-(4).*

TILA creates a rebuttable presumption that the disclosure where there is "written acknowledgement of receipt of any disclosures by a person to whom such information is to be provided. *15 U.S C. 1638(a)(3) and (a)(4) Petitioner received disclosure from broker and some disclosures from Respondents, however all disclosures were not provided, including " The Margin Disclosure" . The burden of proof is on the Respondents (Lender) to show proof of all compliance of disclosures, Payne v. Equicredit, No. 00-6442, slip op. at 10-11* (E.D. Pa April 12, 2002). Respondents have shown no proof of compliance. *Proof must be shown when charges are alleged.* The Petitioner was willfully misled by the intentional omissions by the Respondents to disclose material facts of the loan; " The Margin " was not disclosed prior to closing,then finally providing it at closing in willful-

ly misleading manor and terms, *Clement, 145 F. Supp 2nd at 210 quoting Griggs, 503 F. Supp at 249,* . There is also no need for consumer to show he was misled by confusing and ambiguous terms, *Noel v. Fleet Finance Inc. 971.* F. Supp 1102 (E.D. Mich 1997). Provisions must me construed liberally in favor of consumer, *Belmont v. Associates Bank,* 119 F. Supp, 2nd 149,159 (E.D. N.Y.. 2000).

The Respondents willfully misled the Petitioner at least 5 separate times: *1)* The Respondents failed to provide full disclosures of the loan by failing to provide " The Margin" in the initial mortgage disclosures 3 - days after application. *2)* The Respondents intentionally omitted providing disclosures to Petitioner 3- days prior closing. This was an intentional omission in violation of RESPA that prevented the Petitioner again from receiving the disclosures in writing and concealing "The Margin". *3)* The Respondents intentionally failed to provide closing documents 24 hours prior to closing to Petitioner for review; This violation of RESPA and an intentional attempt to conceal and mislead Petitioner, especially in regards to " The Margin" on the loan. *4)* The Respondents intentionally failed to provide Petitioner " Right of Rescission" even though it was originally purchased as Petitioners personal residence and the loan was used for consumer purposes. *5)* The Respondents provided misleading and confusing terms on closing documents and failed to provide representative to explain documents at closing. " The Margin" and adjustable rate terms when finally disclosed for the first time,were misleading and confusing indicating willful intentions to mislead Petitioner.

Equitable tolling applies to loans in collection and foreclosure. The loan is currently and has been in collection and foreclosure with the Respondents since legal action commenced.

The legal action was taken after the Petitioner discovered the fraud and could no longer afford the absorbitant payments. The Office of the Comptroller states that equitable tolling applies when the loan is in collection or foreclosure and also states that case law supports this. *The "Office of the Comptrollers Truth - In -Lending Handbook 2006 &2008 Page 40 &Page 41, also Augustine v. Danvers Bank CA No 05- 46957 District Court MA 2006.*

The second question for review: Equitable tolling applies to *the discovery rule.* The court should have applied the discovery rule as it is clear that the Respondents concealed the terms of the loan as much as possible and provided misleading terms to the Petitioner. Equitable tolling must be read into every federal statute unless congress specifies otherwise *U. S. Supreme Court, Holmberg v. Armbrecht,*327 U.S. 392 (1946), Extensive case law supports law on discovery.

Petitioner should have had 50 days to complete "Due Diligence", but instead had less than one hour. One hour is hardly enough time to complete "Due Diligence" when 50 days should have been afforded by law. This is clearly fraud and deception! The short one hour of "Due Diligence" time provided at settlement was not enough time to catch the change in terms that were never disclosed.

Petitioners cite extensive case law for the *discovery rule*: *Kramer v. Dunn,* 749 A. 2nd 984,989 (Pa Supp 2000), *McIntosh v. Irwin Union Bank & trust Co.*215 F.R.D. 26,30 (D Mass 2003), *Rotella v.Wood*, 528 U.S. 549,120 S. Ct 1075,145 L. Ed 2nd 1047 (2000), *Andrews v. Chevy Chase Bank* (E.D. WIS. Jan 16,2007), *Baily v. Glover, 88 U. S.* (21 wall) 342, 347 (1874), *Osterneck v. ET Berwick Ind*, 825 F 2nd 1521, 1535 (11th Circuit. 1987). *Aff'd, Osterneck v. Ernst & Whitney,* 489 U. S. 169 (1989).

The third question for review A decision by the Third Circuit Court is in direct conflict with the intent of The Truth - In - Lending laws.

McCutcheon v. America's Servicing Co. 560 F. 3rd 143, 150 n 6.

The opinion stated that " The only required material disclosures with respect to the variable-rate nature of a mortgage are the notification that the interest rate and monthly payment may increase and the amount of the single maximum monthly payment".

There is a genuine issue of material fact and application of law. The purpose of "The Truth- In- Lending Act" (TILA) 15 U.S.C. 1601(a) clearly states" The informed use of credit results from awareness of the cost thereof by consumers. It is the purpose of this sub-chapter to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices".

This decision provides the opportunity for lenders to mislead consumers of the complete terms of the loan; Omitted terms and disclosures are in direct conflict of the intent of mission of Truth-In-Lending.

The consumer is not fully informed of the complex terms of an adjustable rate mortgage when only " the notification of monthly payment may increase and the amount of the single maximum monthly payment".

The fourth question for review. Clarification of " A Loan for Consumer Purposes "on a mortgage loan The Petitioner was denied "The Right to Rescind" the loan under TILA. The home was originally purchased as the principal residence for Petitioner and the loan was made for consumer purposes. The loan meets the definition or interpretation provided by "The Comptrollers Handbook on Truth - In -Lending 2006 & 2008 Edition, Page 40 & Page 41".

There is also similar case law that supports Petitioners interpretation. Case law for definition of *a loan for consumer purposes* , *Cashmere Valley Bank v. Bender* (146 P 3rd 928, *Supreme Court of Washington, November* 16, 2006 , The Comptrollers Handbook on Truth - In - Lending 2006, & 2008 Edition, Page 40 & Page 41". It also states that "There is no statute of limitations for willful intentions to mislead". Sec 1601, 1635(f) rescission rights were never delivered, *Sec 1601, 635(I).* Rescission rights are also extended in collection/ foreclosure action., *Sec 1601, Sec 1635(a)*

Delivery of forms starts the rescission; " The obligor shall have the right to rescind the transaction until midnight on the third business day following the consummation of the transaction or the delivery of the form and rescission forms, *whichever is later"*. Petitioner shall have the right to rescind since no rescission forms have been delivered yet; *Therefore The Rescission Period has not even started.*

The Fifth question for review: Should other laws have been cited for Petitioner by the Judge as a Pro Se Plaintiff ; There were other applicable State laws that were not know by the Petitioner at the time the complaint was filed and statute of limitations were not expired.

A Pro Se Petitioner *need not specify a specific* statute *or regulations* that entitle him to relief. *The court will examine complaint on any possible theory,* Hill v. GFC Loan Co. 2000. U.S. Dist. Lexus 4345 (N.D. ILL. Feb 5,2000). The court *failed to view other laws that were violated* that had either equitable tolling provided, or laws in which the statute of limitations were not up. *Other laws would include The Pennsylvania Unfair Trade Practices Act And Consumer Protection Law as well as other State Laws that would apply to mortgage fraud. The court failed to cite other laws that should have been cited in the evidence provided and supplemental briefs. Response to motion can supplement complaint, Herrara v. North & Kimball Group, Inc.* 2002 WL 253019 (N.D. ILL. Feb 20,2002).

District court failed to allow Petitioner to amend complaint. Federal Rules of Civil Procedure allow for a complaint to be amended when There is a new discovery of law or additional evidence. *The Petitioner is not an attorney and did not know at the time the initial law suit was filed that other laws were violted, only that there was fraud involved. FRCP Rule 59 & 60.*

A Request made by Petitioner. The Petitioner requested on May 7, 2009 that the complaint be amended to include additional violations that were discovered since the original complaint was filed. Since the Petitioner is Pro Se and cannot afford an attorney, the Petitioner was not aware of the other violations by Respondents until a further review of the laws and file. The Petitioner at that time made a request to amend the complaint. The request to amend the complaint was never addressed and the case was"Dismissed with Prejudice" *Rule 59 & Rule 60 provides Petitioner Opportunity to amend complaint when there is new information or discovery, the Petitioner made the request to amend the complaint when it was discovered.* The court erred when it did not provide Petitioner knowledge as to deficient pleadings that could have cited other laws that had equitable tolling and state laws with longer statute of limitations, *B Platsky v.CIA* 953 F.2ND 252628 (2ND CIR 1991). Specific violations do not have to be alleged with particularity. *Brown v. Mortgage Star.* 194 F. Supp 2 nd 273 (S.D. W Va 2002)

CONCLUSION

There are several reasons this appeal should proceed as noted in this brief. Most importantly, as a matter of law, the burden of proof of compliance in on the Respondents to show that they have complied with all disclosures and followed all procedures in TILA & RESPA cases once they are asserted in a court of law; The Respondents has provided no proof that these disclosures were provided, or procedures were followed. Furthermore, disclosures are required to be kept in file for five years, yet they were not produced as evidence that they have complied.

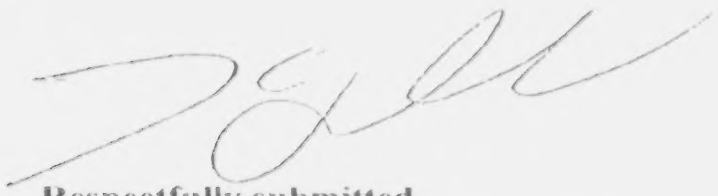
The Respondents have shown many willful intentions to mislead and fraudulently conceal terms several times and then providing misleading terms to the Petitioner. Respondents made every attempt to conceal and confuse Petitioner as to the actual terms of the loan. The Petitioner was denied the right to amend complaint. The Petitioner is a Pro Se Petitioner that cannot afford an attorney. The Petitioner filed a complaint that contained violations known at the time of the compliant.

After the complaint was filed, Petitioner further reviewed the file and completed more research that revealed more violations. When Petitioner requested that the complaint be amended and a status conference be held, the court did not even respond to Petitioners request. The court indicated that " The Petitioner may have had a claim against someone " yet failed to allow an amended complaint. other violations in this case have a longer statute of limitations and violations that may have equitable tolling that applies; The district court did not follow proper procedure as

noted and violated the rights of the Petitioner by denying him the right to amend the Complaint as provided by law. The court did not examine the complaint for relief on any possible theory as required *Hill v. GFC Loan Co.* 2000 U.S. Dist Lexis 4345 (N.D. ILL Feb 15,2000).

District court failed to construe the complaint liberally in favor of the party in reviewing a Pro Se complaint. *Rosemary A. Gilroy v Ameriquest Mortgage Company et al. Fn1*

The TILA & RESPA violations should be subject to Equitable Tolling and the complaint examined for relief on any possible theory including state Pennsylvania Unfair Trade and Practices Act & Consumer Protection Laws.



Respectfully submitted,

March 29,2010

Kenneth J Taggart
45 Heron Rd
Holland, Pa 18966

App 1

AMENDED LD-049

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 09-3067

KENNETH J. TAGGART
Appellant

v.

CHASE BANK U.S.A., N.A.; JP MORGN CHASE BANK,
d/b/a CHASE HOME FINANCE,LLC

On Appeal from the United States District Court

for the Eastern District of Pennsylvania

(D.C. Civil No. 2:09-cv-01533)

District Judge: Honorable John P Fullam

Submitted for Possible dismissal summary Action

Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

November 19,2009

Before: SLOVITER, AMBRO AND SMITH, Circuit Judges

JUDGMENT

This cause came to be considered on the record from The United States District Court for the Eastern District of Pennsylvania and was submitted for possible summary action pursuant to the Third Circuit LAR 27.4 and I.O.P. 10.6 on November 19,2009. On consideration whereof, it is now hereby

ORDERED AND ADJUDGED by this Court that the Judgment of the District Court entered June 15,2009, be and The same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

Marcia M. Waldron
Clerk

DATED: November 27,2009

AMENDED ALD 049 NOT PRESEDENTIAL

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 09-3067

KENNETH J TAGGART,
Appellant,

v.

CHASE BANK USA, N. A.; JP MORGAN CHASE BANK,
d/b/a CHASE HOME FINANCE, LLC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 2:09-cv-01533)
District Judge: Honorable John P. Fullam

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
November 19,2009
Before: SLOVITER, AMBRO AND SMITH, Circuit Judges

(filed: November 27,2009)

OPINION

PER CURIAM

Kenneth Taggart appeals pro se from a District Court order dismissing his action as untimely. For substantially the Same reasons, we will affirm.

On March 5,2009, Taggart initiated this action in state court asserting violation of the Truth In Lending Act ("TILA"). Taggart alleged that the terms he signed in his mortgage closing on July 20,2005, were different than the Disclosures he previously received June 5,2005. Taggart claimed that the lender did not make the paperwork available for 24 hours prior to settlement, that the June 2005 disclosures were confusing and misleading, and that the margin and the annual percentage rate were different than what he was originally informed they would be. Taggart also sued for rescission rights.

On April 9,2009, defendants removed the action to federal court and filed a motion to dismiss. Defendants argued that Taggart's claims were time-barred and that his Rescission and damage claims were not actionable under TILA. In support, they included a copy of the mortgage note which was signed by Taggart on July 20,2005, along with various other documents from the property closing that disclosed the terms of the mortgage. The District Court converted defendants' motion to dismiss into a motion for summary judgment and ordered Taggart to respond, Specifically to "demonstrate why the action was not filed too late (for example, if equitable tolling applies)". Taggart replied, but did not address how action is not barred as Untimely. Accordingly, the District Court found that the action was filed too late and dismissed it . Taggart Timely appealed. Appellees filed a motion for summary affirmance.

1 In its memorandum, The District Court incorrectly identified the date of the mortgage closing as June 20,2005. A review of the record indicates that the mortgage closing was on July 20,2005. This error does not change the Outcome of the District Court's decision.

We have jurisdiction under U.S.C. 1291. We will summarily affirm if Taggart's appeal presents no substantial question. See 3rd Cir. L.A.R. 27.4 and 3rd Cir. I.O.P. 10.6 Our review is plenary. See Kaucher v Bucks County, 455 F.3rd 418, 422 (3rd Cir. 2006). Summary judgment will be affirmed if the record demonstrates that there is no genuine Issue as to any material facts and the movant is entitled to Judgment as a matter of law. Fed. R. Civ. P. 56(c).

TILA imposes a one-year statute of limitations on actions that state a claim for damages based on a violation

of disclosure provisions. See 15 U.S.C. 1640(e). The limitations period begins when the transaction occurs. Id; see also Ramadan v. Chase Manhattan Bank 156 F.3rd 499, 500-01 (3rd Cir. 1998). Equitable tolling can rescue a TILA claim otherwise barred by the statute of limitations when the movant has "in some extraordinary way... been Prevented from asserting his or her rights." See Miller v. State Dep't of Corr, 145 F.3rd 616,618 (3rd Cir 1998) (quoting Oshiver v Levin, Fishbein, Sedran & Berman, 38 F.3rd 1380, 1380 (3rd Cir. 1994). Specifically, he must Demonstrate that he exercised reasonable due diligence in Investigating and bringing" his claims. Miller, 145 F3rd at 618-19 (quoting New Castle County v. Halliburton NUS Corp., 111 F.3rd 1116,1126 (3rd Cir. 1997).

The parties do not dispute that Taggart closed on The mortgage and signed the TILA disclosure statements on July 20,2005. Taggart filed his complaint on March 5,

2009 - clearly exceeding the one year limitations period. Taggart's claim that he has the right to rescind also does not Render his action timely; under 15 U.S.C. 1635(f), he must File his action within three years after closing. Even assuming that this section applies, the three-year period expired in July 2008 2 Thus, his claims are time-barred.

Taggart also fails to show that equitable tolling Applies. See Santos v. United States, 559 F.3rd 189, 198 (3rd Cir. 2009). He does not show that defendants actively Misled him or engaged in conduct after the loan closed that Justifies equitable relief. The mortgage documents that Taggart signed expressly state the terms of his loan, which appellees show that Taggart continued to pay for over three years up until he filed the instant action. Taggart does not show that the defendants took extraordinary steps to prevent him from asserting his rights. Id. Nor does he show That he exercised reasonable diligence in investigating and

Bringing these claims. Miller, 145 F. 3rd at 618-19. Accordingly Taggart's claims were properly dismissed.

Finally, Taggart's arguments to the Court do not justify relief. The District Court did not err in denying Taggart's permission to amend because his claims were barred as a matter of law. Even assuming, arguendo, that violations had occurred, the latest Taggart could have filed a claim was one year after his mortgage closed, i.e., not Later than July 20,2006. His contention that he did not Discover the alleged misleading terms until payments had increased does not excuse his untimeliness. Section 1635 (f) also

---

2 Moreover, a consumer's right of rescission extends for three years only if the property is the consumer's principaal Dwelling. See 15 U.S.C. 1635. Evidence provided by Defendants shows that the mortgage was to refinance an Investment property.

completely extinguished any right of rescission Taggart could have asserted when the three-year period ended on July 20,2008. See Beach v Ocwen Fed. Bank, 523 U.S. 410, 412 (1998). Because dismissal was proper and because The appeal presents no substantial question, we will grant the appellees' motion and summarily affirm the District Court judgment. Appellant's motion for summay action are Denied as moot. In light of our disposition, Appelles' motion to strike Appellant's document titled "Additional Information/Notice to Court for Appellant's Cross to Motion for Summry Action" is denied.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART ; CIVIL ACTION

v.

;

CHASE BANK USA, N.A. and
JP MORGAN CHASE BANK N.A. ; NO. 09-cv-01533-JF
d/b/a/ CHASE HOME FINANCE,LLC

ORDER

AND NOW, this 15th day of June 2009, upon consideration of the defendants' Motion to Dismiss, considered as a motion for summary judgment, and plaintiff's response, IT IS ORDERED:

1. The defendants' motion is GRNTED. this action is dismissed with prejudice.

2. The clerk is directed to close the file.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART ; CIVIL ACTION

v.

;

CHASE BANK USA, N.A. and
JP MORGAN CHASE BANK N.A. ; NO. 09-cv-01533-JF
d/b/a/ CHASE HOME FINANCE,LLC

MEMORANDUM

Fullam, Sr. J. June 15,2009

The *pro se* plaintiff, Kenneth J Taggart, has brought This action asserting violations of the Truth in Lending Act, 15 U.S.C. 1601. The defendants filed a motion to dismiss plaintiff's complaint, pointing out, among other things, that his claims were time-barred. On March 5,2009, I entered an Order converting defendants' motion to dismiss to a motion for summary judgment, and granting plaintiff time to reply, pointing out, specifically, the limitations argument.

It is clear, and undisputed, that the claims asserted by plaintiff are governed by a one-year statute of limitations. The gist of the plaintiff's claim is that he applied for a fixed -rate mortgage loan, and the brokerage firm to whom he applied promised that the mortgage would bear a fixed rate of interest. The mortgage was ultimately approved by these Defendants, and was an adjustable-rate mortgage.

Unfortunately for plaintiff's claims, the mortgage Closing was held on June 20,2005. The Note signed by the plaintiff, and various other documents signed by plaintiff at closing, clearly disclosed that this was an adjustable-rate mortgage; that the stated rate would remain for the first three years, but could be adjusted thereafter. Thus, Whatever claims plaintiff may have had arose not later than June 20,2005. This action was commenced, in the Municipal court of Philadelphia, in early April 2009, and was removed to this court on April 9,2009. Thus, even

Assuming (contrary to some potent arguments made by the Defendants) plaintiff might have had some valid claim against someone, this lawsuit was filed too late, and must be dismissed.

An Order follows.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

No. 09-3067

KENNETH J TAGGART,
Appellant

v.

CHASE BANK USA, N.A.
JP MORGAN CHASE BANK,
d/b/a CHASE HOME FINANCE,LLC

SUR PETITION FOR REHEARING

Presant: SCIRICA, Chief Judge, SLOVITER, McKEE, AMBRO, FUENTES,SMITH,FISHER,CHAGARES, And JORDAN, Circuit Judges

The petition for rehearing filed by Appellant Kenneth J. Taggart in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for reharing by the court en banc, the

petition for rehearing is denied.

By the Court,

/s/ Dolores K Sloviter
Circuit Judge

Dated: December 29,2009
CLW/cc: Mr. Kenneth J Taggart
Robert L Byer, Esq.
Sheila R. Wiggins, Esq